

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5089 of 1985

Date of decision: 28-11-1997

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DJ NERKAR

Versus

STATE BANK OF INDIA

Appearance:

Mr. K. Y. Kogze for Petitioner
Mr. Pranav Desai for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 28/11/97

ORAL JUDGEMENT

The petitioner, an Ex-Service man, who has been given appointment in the State Bank of India, has filed this special civil application challenging the order of the respondents, reducing his salary from Rs.1332.43 to Rs.1035.75, and for direction to the respondents to fix his basic pay at Rs.820/- in the new pay-scale of Rs.520-1660 with effect from 1-8-1984. The petitioner has also prayed for direction restraining the respondents from effecting recovery of the excess amount.

2. Learned counsel for the petitioner contended that the circular on which reliance has been placed to take action against the petitioner is not applicable as subsequent resolution has also been passed by the Bank, copy of which has not been produced by either of the parties. The counsel for the petitioner claims that this circular is not made available, and as such the Bank may be directed to produce the circular before this Court. Learned counsel for the respondent Bank fairly suggests that in case there is any circular as claimed by the petitioner, then those benefits will be extended to the petitioner. Be that as it may.

3. The question of recovery of the excess amount said to have been paid cannot be said to be reasonable and justified. It is not the case where the petitioner has taken the amount from the bank, but he has taken that amount which has been paid under orders of the Bank. Even if it is an error committed by the Bank, how far it is justified on the part of the Bank to recover the said amount rather than considering waiver of the recovery of the amount.

4. In the facts of this case the interest of justice will be met in case the special civil application is disposed of with the direction to the bank to consider the matter afresh in the light of the subsequent resolution which is alleged to be there. If the petitioner is not given the benefit of the subsequent resolution, then the bank shall also consider the question of waiver of the excess amount paid to the petitioner. This exercise shall be undertaken by the respondents within six months from the date of receipt of copy of this order. Till then the interim relief granted earlier by this court shall continue. Liberty to the petitioner to revive the petition in case of any difficulty. Rule discharged. No order as to costs.

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CSM